

EXHIBIT A

1 IN THE UNITED STATES DISTRICT COURT

2 IN AND FOR THE DISTRICT OF DELAWARE

3 - - -
4 DYSON TECHNOLOGY LIMITED : Civil Action
5 and DYSON, INC., :
6 Plaintiffs, :
7 v. :
8 MAYTAG CORPORATION, :
9 Defendant. : No. 05-434 (GMS)
- - -

10 Wilmington, Delaware
11 Thursday, December 7, 2006
12 2:00 p.m.
13 Telephone Conference
- - -

14 BEFORE: HONORABLE GREGORY M. SLEET, U.S.D.C.J.

15 APPEARANCES:

16 JOHN W. SHAW, ESQ., and
17 C. BARR FLINN, ESQ.
18 Young Conaway Stargatt & Taylor, LLP
19 -and-
20 RICHARD C. PEPPERMAN, II, ESQ., and
21 Sullivan & Cromwell LLP
22 (New York, N.Y.)
-and-
23 STEVEN F. REICH, ESQ.,
24 CHRISTOPHER COLE, ESQ. (Washington, D.C.), and
25 TAMAR FEDER, ESQ. (Los Angeles, CA)
Manatt, Phelps & Phillips, LLP
(New York, N.Y.)

Counsel for Plaintiffs

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APPEARANCES CONTINUED:

FRANCIS DiGIOVANNI, ESQ.
Connolly Bove Lodge & Rutz LLP
-and-
STEPHEN DURCHSLAG, ESQ.,
RONALD Y. ROTHSTEIN, ESQ.,
ANTHONY DiSARRO, ESQ. (New York, N.Y.),
LISA J. PARKER, ESQ., and
JOSHUA GOLDBERG, ESQ.
Winston & Strawn LLP
(Chicago, Illinois)
-and-
RAY L. WEBER, ESQ.
Renner Kenner Graive Bobak Taylor & Weber, LPA
(Akron, Ohio)

Counsel for Maytag/Hoover

- - -

THE COURT: Counsel, good morning. Who is on
the line for the plaintiff?

MR. SHAW: Good morning, Your Honor. John Shaw
at Young Conaway for the Dyson parties. With me from my
office is Bart Flinn. From the Sullivan & Cromwell firm
Rick Pepperman, and from the Manatt Phelps firm Steven
Reich, Chris Cole, and Tamar Feder.

THE COURT: Good morning.

For the defendant.

MR. DiGIOVANNI: Your Honor, Frank DiGiovanni
for Maytag. Also on the line with the Renner Kenner firm is
Ray Weber. And with Winston & Strawn we have Steve
Durchslag, Ron Rothstein, Anthony DiSarro, Lisa Parker and

1 we will get together with Mr. Cole and Mr. Reich and be able
2 to agree on a briefing schedule.

3 THE COURT: If you can, you can.

4 Let's go to B.1.

5 MR. COLE: Your Honor, this issue relates to
6 discovery on Maytag's (inaudible) suction claim.

7 As you know, Maytag -- this implicates the other
8 case as well. I am not going to -- the fusion vacuum
9 cleaner that is being sold is being sold with a very
10 prominent advertising claim that the product offers no loss
11 of suction. Now, earlier during this very call Your Honor
12 heard a significant amount of argument from counsel for
13 Maytag that the way that Dyson substantiates its no loss of
14 suction claim in other countries is directly relevant to
15 this lawsuit, they absolutely needed that discovery.

16 During the course of discovery on this case,
17 however, Your Honor, Maytag's attorneys have resisted
18 producing any evidence or any discovery regarding Maytag's
19 own use of the very claim that they are challenging in our
20 case. We think the way they substantiate that claim is
21 absolutely relevant to their argument that our claim is
22 false. And we are seeking discovery on that. It's
23 absolutely relevant, certainly calculated to lead to the
24 admission of admissible evidence.

25 In this case, I don't see any credible argument

1 that it is not relevant to this case.

2 THE COURT: Okay.

3 MR. ROTHSTEIN: Your Honor, on behalf of Maytag.
4 I have a number of remarks to make about that.

5 The first is, Your Honor, this is just an
6 end-run around the discovery process to obtain discovery and
7 get a free pass on discovery in the case that they
8 originally filed in New York and was subsequently
9 transferred to Delaware.

10 The claims at issue in that case are not at
11 issue in the case currently pending before Your Honor and
12 that we are on the call for here today. And any suggestion
13 to the contrary would be disingenuous.

14 Your Honor, Dyson here is just seeking to obtain
15 discovery in that matter to attempt to bolster their
16 preliminary injunction motion that they have got pending
17 before Your Honor. They have not moved on that preliminary
18 injunction. They have never brought that preliminary
19 injunction motion to Your Honor's attention. They have
20 really been hiding their heads in the sand on that issue.
21 And it was not until today, Your Honor, that Maytag forced
22 the issue to come up in front of Your Honor on their
23 preliminary injunction that that issue has even been
24 addressed in front of the Court.

25 And it's really incumbent on them, and we have

1 repeatedly stated to Dyson, if you think that those issues
2 are relevant in the present case, then you have got to seek
3 some sort of relief from the Judge. But short of doing
4 that, it is our belief that they are just inappropriately
5 trying to get discovery on another case and just wasting
6 everybody's time trying to establish and carry their burden
7 of proof on a motion for preliminary injunction where we
8 have just gotten over that whole discussion.

9 We haven't even had our Rule 16 conference to
10 establish discovery timelines.

11 My final point, Your Honor, is every time we ask
12 them, why do you need this discovery, their response is,
13 because it's calculated to lead to the discovery of
14 admissible evidence. That's all we get. We don't get any
15 explanation beyond that.

16 And I would just like to say in my final remark
17 that the claims are different and they haven't demonstrated
18 the claims are the same in any respect whatsoever. There is
19 some similar language, but there are some very vast
20 differences.

21 THE COURT: So a request, and I think an
22 appropriate one, that if the information sought is
23 calculated to lead to admissible evidence, then you need to
24 be more specific than just stating that in conclusory
25 language.

1 MR. REICH: Judge, let me give you a very
2 concrete reason why we need this evidence. They are going
3 to stand in front of the jury with respect to our no loss of
4 suction claim, and they are going to attempt to undermine
5 the manner in which we substantiate that claim and the tests
6 on which we rely to substantiate that claim. I need to be
7 able to, on our part of the case, or in cross-examination,
8 say to Maytag's witnesses, okay, Mr. Witness, you are
9 critical of how we substantiate our no loss of suction
10 claim. You are critical of the testing that we rely on to
11 substantiate our no loss of suction claim. How do you
12 substantiate your no loss of suction claim and what tests do
13 you rely on to substantiate your no loss of suction claim?
14 And wouldn't it be probative if they substantiated their no
15 loss of suction claim the way we did? And wouldn't it be
16 probative if they relied on the same kind of testing that we
17 did?

18 I very much need that evidence in this case,
19 Your Honor.

20 THE COURT: All right.

21 MR. ROTHSTEIN: Your Honor, several points.
22 First of all, Maytag's advertising is not at issue in this
23 case. And they are not claiming that it is.

24 The second thing is, it's not probative how
25 Maytag substantiates its advertising in the present case

1 because it's Dyson's burden to prove that they have got
2 appropriate substantiation for their own advertising claims
3 and that they had that substantiation at the time that they
4 decided to make those advertising claims, which was at least
5 in the United States over four years ago.

6 What Maytag does in its advertising is not
7 probative in any way whatsoever to how Dyson was conducting
8 itself as early as 2002 in the United States.

9 So it's obviously just a ruse to get discovery
10 for their preliminary injunction motion and avoid their
11 responsibilities, their procedural responsibilities that
12 they should go to. They are ultimately going to get that
13 discovery, we have explained that to them in detail, when
14 they get their discovery in the transfer case. But they
15 should wait for that opportunity and not burden the parties
16 with discovery that just has absolutely no bearing on the
17 ultimate issues in this case.

18 MR. REICH: Judge, if they are going to attack
19 the reasonableness of our substantiation, and if they are
20 going to attack the reasonableness of our testing, our
21 position is that a reasonable juror, if a reasonable juror
22 heard that their substantiation methods were the same or
23 similar to ours, or that their testing were the same or
24 similar to ours, that reasonable juror could find that our
25 substantiation of that same claim or our testing of that

1 same claim was also reasonable and therefore could refuse to
2 return a verdict in favor of Maytag.

3 THE COURT: There is a no loss of suction claim
4 in the 434 case?

5 UNIDENTIFIED SPEAKER: Yes.

6 MR. ROTHSTEIN: It is a different claim, Your
7 Honor. It is a qualified claim. The language is entirely
8 different from any of the claims that are being made by
9 Dyson in the current case.

10 THE COURT: So you don't expect it to come up in
11 the context that Mr. Reich suggests?

12 MR. ROTHSTEIN: I didn't follow you, Your Honor.

13 THE COURT: In other words, the concern that Mr.
14 Reich articulates, you submit, is a straw person or straw
15 man?

16 MR. ROTHSTEIN: I absolutely do, Your Honor.
17 Quite frankly --

18 THE COURT: Or red herring, whatever colloquial
19 term you want to use.

20 MR. ROTHSTEIN: I do, Your Honor. Quite
21 frankly, what Hoover does, or is doing currently, or is not
22 doing currently, is not a proxy for what Dyson is or was
23 required to do back in 2002 when they came to the United
24 States.

25 THE COURT: I agree. I am going to deny the

1 request.

2 No. 2. Scope of waiver of attorney-client
3 privilege in defense of willful infringement.

4 MR. SHAW: Your Honor, I believe this presents a
5 very discrete legal issue for Your Honor, one you have
6 probably seen before.

7 The question here, Maytag has relied on opinions
8 of counsel on noninfringement and some aspects of invalidity
9 to defend our claim of willful infringement in the patent
10 case. The dispute between the parties is a very discrete
11 one: what is the scope of waiver that attends that opinion?

12 It is Dyson's position that the waiver is of the
13 subject matter of the opinion and goes to all communications
14 between counsel and client as to those subjects, and also as
15 to the work product and other things that the client who
16 received that bear on the reasonableness of the client's
17 state of mind after receiving the opinion.

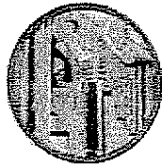
18 Your Honor's last writing on this that I have
19 been able to find is from, I believe, the Mosel-Vitellic
20 case. It appears to be consistent with the rulings that
21 Judge Farnan and Judge Robinson have rendered as recently as
22 this summer, and also with the Federal Circuit's opinion in
23 the In Re EchoStar case from May, that the scope of waiver
24 does extend to the entire subject matter of the opinion.

25 Maytag, as I understand it, is relying on what I

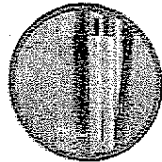
EXHIBIT B

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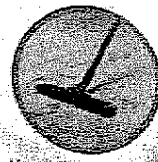
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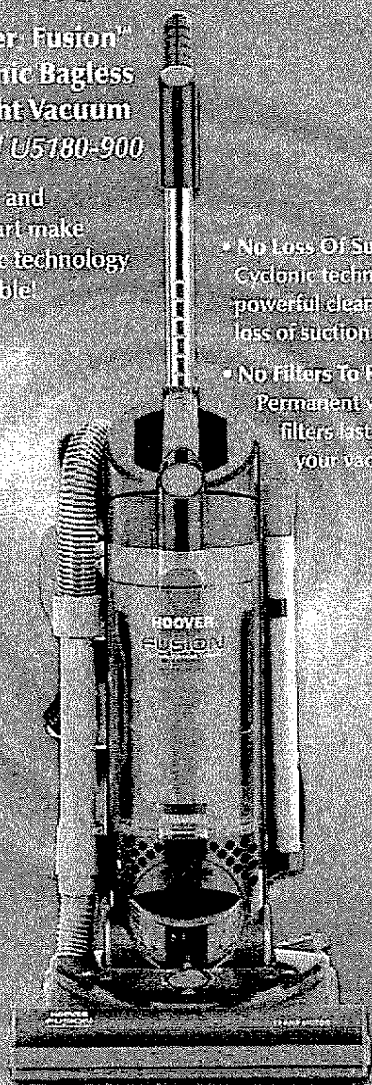
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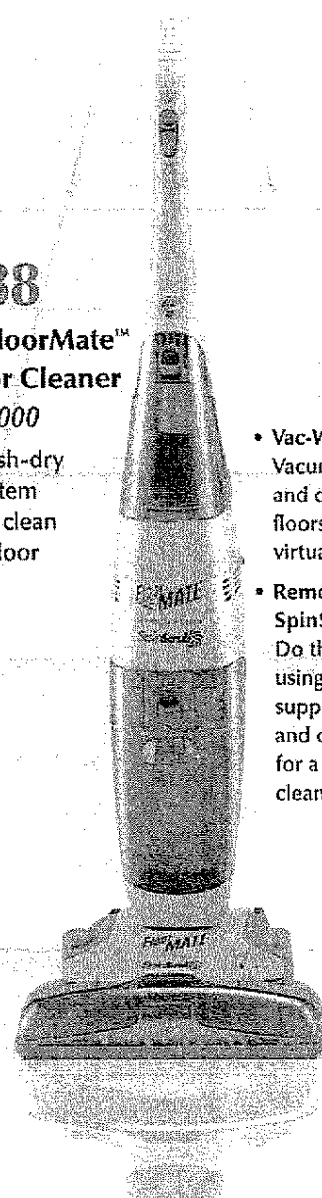
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EXHIBIT E

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